

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j) of the)
Communications Act - Competitive Bidding)

PP Docket No. 93-253

To: The Commission

COMMENTS OF GLENAYRE TECHNOLOGIES, INC.

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Glenayre Technologies, Inc. ("Glenayre"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") issued by the Commission in the above-referenced proceeding.¹

I. BACKGROUND

Glenayre is a worldwide producer of telecommunications equipment and related software used in wireless personal communications service (PCS) markets, including wireless messaging, voice processing, mobile data systems and point-to-point wireless interconnection products. Glenayre is included in the NASDAQ-100 Index and is a leading manufacturer of paging technology worldwide.

The Commission seeks to revamp its licensing procedures for all commercial paging frequencies, both Part 90 and Part 22, in

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¹FCC 96-52, released February 9, 1996.

this proceeding. Comments on the Commission's proposed new rules are due to be filed on March 18, 1996.²

The Commission's adoption of the NPRM included a freeze on the acceptance of new applications for paging systems.³ In partial recognition of the impact of a freeze on the paging industry, the Commission requested expedited Comments on the issue of whether incumbents should be permitted to file new applications "... that would expand or modify their existing systems beyond their existing interference contours with such modifications receiving only secondary site authorizations."⁴ Glenayre submits these Comments in response to the Commission's questions regarding the freeze.

II. COMMENTS

Glenayre is adamantly opposed to a partial or complete freeze on the acceptance of new applications during the pendency of this proceeding. Without addressing the merits of the Commission's licensing proposals at this time, even a partial freeze is ill-advised and imposes significant harm on the paging industry.

²The NPRM has apparently not yet been published in the Federal Register, although the document was released on February 9, 1996. Similar delays in publication by the Commission have occurred in PR Docket No. 93-144, where a document released December 15, 1995 was not published until February 16, 1996, and the Commission's "Goodman/Chan" Order, which has still not been published although the document was released in May of 1995.

³The NPRM included certain exceptions, notably the ability of certain operators to construct "fill-in" sites which do not extend the system's interference contour.

⁴NPRM at para. 143.

A. The Commission's Objectives Do Not Require A Freeze

It is the Commission's contention that "... continuing to accept new applications under the current rules would impair the objectives of this proceeding."⁵ A review of paragraph 1 of the NPRM shows that the Commission has the following objectives in this proceeding: (1) promote continued growth in the paging industry; (2) preserve vigorous paging competition; (3) simplify and streamline licensing procedures; and (4) provide a flexible operating environment for all paging services.⁶ However, as shown below, an application freeze during this proceeding does nothing to promote these objectives.

1. An Application Freeze Does Not Promote Continued Growth

The paging industry (both common carrier and private carrier) has experienced rapid growth year after year of thirty percent (30%) or more. A freeze puts all growth on hold. Congested systems cannot expand because of the freeze, and carriers are reluctant to build additional systems because of uncertainty over the status of licenses. System operators have staffed their businesses, made acquisitions, leased sites and, in many cases, placed equipment orders with the understanding that licensing would continue under the existing rules or would not be changed without due notice.

Smaller operators are particularly impacted by this freeze and may never be able to recover. Some operators were unable to

⁵NPRM at para. 139.

⁶NPRM at para. 1.

participate in the narrowband PCS auction, and were depending on the technological upgrades to their existing paging systems to be able to compete with PCS systems under construction. Even operators who successfully have acquired PCS licenses are harmed in that expected growth in revenue from traditional paging operations was earmarked for PCS construction efforts.

As a manufacturer, Glenayre is particularly injured by the freeze. Production lines are not spigots which can be quickly turned on and off depending on perceived needs. Instead, production must be carefully planned far in advance. Glenayre and other manufacturers have built facilities, expanded employment, ordered raw materials and planned shipments as a result of customer forecasts and actual orders. The Commission's freeze results in a backlog of equipment gathering dust in the warehouse, which represents a substantial cost to manufacturers (which must be passed on eventually to customers) and delaying the development of new equipment. Glenayre estimates that it will lose \$10-12 million in revenue and \$2.9-5.7 million in profits as a result of the Commission's freeze. Glenayre estimates that approximately 150-300 jobs at Glenayre will be jeopardized by an extended freeze.

Manufacturers of related equipment are also harmed by the Commission's application freeze. For example, manufacturers of switches, transmission line, antennas, towers and steel will each feel the impact. Clearly, the Commission's objective of promoting continued growth in the paging industry is negated by the freeze.

2. An Application Freeze Stifles Competition

The imposition of a freeze impedes the ability of many operators to continue construction and expansion of their systems. The freeze benefits companies which have completed expansion. Therefore, competition is diminished.

While there is little, if any, "white" space left on any paging frequencies, operators have been methodically building out systems which are already licensed while planning on new facilities to meet projected customer demands. Thus, applications are always being prepared by a carrier for additional systems which do not necessarily represent "white" space, but are expansions for areas which would cause interference if licensed to another carrier. Without the ability to file new applications to expand systems where necessary, operators are unable to meet their customers needs. Customers will then rely on other service providers for features which could be offered on the paging system if not for the Commission's freeze.

3. Many Of The Current Licensing Rules Are Already "Streamlined"

The Commission stated that it seeks to create new paging licensing rules which are "simple and streamlined". The fact is that such procedures already exist. The impact of the Commission's NPRM is to propose a more burdensome licensing system while placing the paging industry on indefinite hold.

For Part 90 paging frequencies, the current rules provide an extremely efficient licensing mechanism without significant Commission involvement. Applications are coordinated by the

Personal Communications Industry Association ("PCIA"), generally within a brief time, and applicants may begin operations immediately after PCIA has filed the application with the Commission. Eventually, the Commission grants the application with minimal review. This system was created by the paging industry, and it serves its purpose well.

While it is certainly possible to make the paging rules even better,⁷ there certainly is no need to place a freeze on applications while the new system is being created. Glenayre does not oppose geographic licensing per se, but Glenayre adamantly opposes the Commission's preferred methodology of refusing to accept applications while its considers new rules.

With regard to Part 22 paging frequencies, the Commission has already been presented with proposals by PCIA and others for rule changes which will serve the industry and the Commission's needs.⁸ Each of the proposals do not require the imposition of a freeze.

B. There Is No Valid Rationale For An Application Freeze

The only reason to have a licensing freeze on paging frequencies is to avoid conflict with any new rules adopted by the Commission. However, processing of applications under the existing rules will in no way prejudice the Commission's proposed rules. Unlike PCS, the Commission has not proposed to create a new service on existing paging frequencies, and there is no need to relocate

⁷See, for example, PCIA's Petition to permit exclusivity on the 150 MHz and 460 MHz paging frequencies filed on July 11, 1994.

⁸See, for example, Comments in CC Docket No. 92-115.

incumbent operators. Thus, the licensing of additional incumbents, or additional service areas, has no impact on the new licensing rules.

The perception is that the Commission wishes to preserve spectrum for auction, and has therefore imposed a freeze to prevent the licensing of any "white" space. However, the Commission has already recognized that there is little, if any, "white" space. Imposition of a freeze imparts no benefit to the paging industry or the Commission, and Glenayre requests that the freeze be unconditionally lifted.

The Commission's freeze clearly does not make sense with regard to the shared Part 90 paging frequencies. As recognized by the Commission in paragraph 18 of the NPRM, there is no virgin spectrum with regard to Part 90 paging channels. For shared frequencies, imposition of a freeze serves no purpose whatsoever.

The Commission has previously endured a negative experience with regard to a paging application freeze. On October 4, 1991, the Private Radio Bureau imposed a freeze on the acceptance of new 929 MHz paging applications in anticipation of the creation of new application processing rules for the band.⁹ Five weeks later, the Bureau lifted the freeze, and in so doing stated:

Since the Order was adopted, the Bureau has become aware of significant recent activity in the private carrier paging industry. A number of private carrier paging entities have made significant capital expenditures that would, in effect, be inadvertently stranded during the pendency of the licensing freeze and result in severe economic harm

⁹See, Order, DA 91-1257, released October 7, 1991.

to those entities. The freeze on applications could also result in a temporary denial of service in many areas where there is a need for private paging services. In fact, our object was to encourage use of the band, not restrict it.¹⁰

The rationale used by the Bureau for lifting the freeze in 1991 is equally applicable today.

Finally, it is indeed ironic that the Commission attempts to justify an application freeze by reference to its 800 MHz SMR Pool and General Category freezes.¹¹ The 800 MHz SMR Pool freeze has been in effect since October of 1994, and has had a devastating impact on the ability of independent SMR operators to operate their businesses.¹² Glenayre does not wish to see the same impact on the paging industry.

¹⁰Order, DA 91-1407, released November 12, 1991.

¹¹NPRM at para. 139.

¹²See, for example, the Ex Parte Comments of PCIA in PR Docket No. 93-144, filed October 29, 1995.

III. CONCLUSION

WHEREFORE, the premises considered, it is respectfully requested that the Commission immediately lift the application freeze imposed by the Notice of Proposed Rule Making issued by the Commission on February 9, 1996 in the above-captioned proceeding.

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